

# ICPS newsletter®

## Stemming the HIV/AIDS epidemic: What are the legislative options?

*The main reason why the HIV/AIDS epidemic is not being stemmed in Ukraine continues to be the lack of a holistic government policy. Alongside this are a number of serious obstacles in terms of the quality of legislation and effective enforcement. Ukraine's legislative capacity to stop the HIV/AIDS epidemic could be strengthened by including consultations in the process of drafting laws, adjusting the country's anti-drugs policy to match EU principles, establishing a policy coordination center under the National Security Council, and other steps*

Since 1995, Ukraine has more actively adopted legislation related to the prevention of HIV/AIDS, which has gradually led international observers to positively evaluate the steps the country has undertaken. Yet, this legal base is simultaneously excessive and inadequate, which encourages abuse of power and corruption among law enforcement bodies and creates confusion among staff working healthcare and welfare facilities.

Policies for preventing HIV and dealing with the intravenous drug use that is the vehicle for transmitting the disease to 70% of the country's HIV-positive individuals are inherently contradictory because of diametrically opposed attitudes towards drug addicts on the part of the police, the medical profession and social services agencies. This has led to serious gaps in treatment, prevention, care, and human rights protection among vulnerable groups—as well as the threat of criminal prosecution. The main reason for these gaps is the lack of an integrated government policy towards HIV and drugs in Ukraine.

### Deep-rooted problems with legislation

**Quality, timeliness and consistency.** Most components of legislation dealing with HIV and drugs have not been developed properly even at the draft stage, which has led to internal contradictions. For example, the latest and fifth National Program is being developed by various agencies without the necessary coordination. As a result,

it looks more like a set of corporate slogans not supported by any understanding of Budget spending based on a holistic approach. The program includes goals without providing a plan to achieve them and does not specify what agency or department takes responsibility for each component. This makes monitoring and evaluation impossible.

**New laws solve old problems but create new ones.** For example, the latest wording of Art. 130 of the Criminal Code makes it possible to hold HIV-positive individuals criminally responsible for using preventive measures because these could hypothetically lead to the infection of others.

**Laws conflict with each other.** Because of such contradictions, the punitive-prohibitive approach prevails currently in Ukraine. For example, because the latest wording of the Law "On the circulation of drugs and psychotropic substances, their equivalents and precursors in Ukraine" contains restrictions that are more severe than those recommended in the 1961 UN Single Convention on Narcotic Drugs and the focus of prosecution is no longer specific individuals, but narcotic and psychotropic substances that are widely used for medicinal purposes, including in painkillers, anesthetics and psychiatric drugs.

**Agencies set rules that defeat good concepts laid out in laws.** After a law has been adopted, the government develops norms and regulations that weaken or distort the key concepts

### **Euro flutters no threat to Ukraine's economy**

The drop of the euro against the US dollar will have no significant consequences for Ukraine's foreign currency market, ICPS economist Oleksandr Zholud told UNIAN, a news agency.

According to the ICPS specialist, Ukraine has effectively pegged the hryvnia to the US dollar at UAH 5.05/USD. The National Bank of Ukraine sets the euro exchange rate based on cross-rates on international money markets. "The exchange rate changes depending on global markets," said Mr. Zholud, "and we're dependent on them."

The ICPS economist does not expect the state of the euro to have much impact on Ukraine's exporters and importers. Although the European Union is a very important trading partner for Ukraine, many European companies settle contracts in US dollars rather than in euros.

Mr. Zholud added that the EUR/USD exchange rate would stay unchanged until the end of 2005 at USD 1.16–1.22/EUR, provided there were no force-majeure circumstances. "This year, the greatest impact has been from events that could not have been predicted: hurricanes, the situation in France, the failure of the EU Constitution," Mr. Zholud concluded. "These circumstances, not economic factors, have had the greatest impact on changes in the euro rate."

behind the law. Lower level rule-setting is one the main hindrances to better legislation, and government employees are used to working by the rules.

**Laws have neither organizational nor financial support.** The government system for treating HIV and drug addiction continues to be inaccessible

to many people because of high costs and underdeveloped network of services. The Ministry of Health's (MOH) budget allocates funding for only 3% of the country's real needs and, even then, only 60–70% of the allocated funding is actually disbursed.

**The implementation of laws is often spoiled by corruption.** The latest evaluation by Transparency International ranks Ukraine 107th of 159 countries for the level of corruption. Not surprisingly, annual MOH spending per HIV patient in 2004 was US \$6,322, whereas the same treatment provided by Medecins Sans Frontieres, an international NGO, costs only US \$522.

**Unreliable standards.** This is one of the inevitable consequences of the hasty reforms implemented in Ukraine. When an overarching state policy is lacking, innovations often lead to Ukrainian standards being even further removed from European practice.

**Lack of an informative and effective feedback mechanism.** There is no system in place for monitoring legislation on HIV and drugs.

## Key steps to reforming HIV and narcotics legislation

**Ensuring quality legislation through consultation.** In democratic countries, the quality of legislation is ensured through openness: proper debate of bills in the professional community and in the society as a whole, consultations with independent lawyers, parliamentary factions and relevant committees. Only after this are bills submitted for general debate in the legislature. This is the only way to minimize the likelihood of adopting incomplete laws and risking further legal contradictions. Professionals must be at the heart of the legislative process and have access to full data and analysis for every bill at every stage of being drafted.

**Reworking and systematizing drafted bills.** This makes it possible not only to take account of new realities, but also to reject any number of existing declarative norms. Contradictory norms only encourage interpretation, and this leads to abuse of power. The agenda should also include bringing into line agency and other regulations that reflect narrow agency interests.

## Continuing to adapt national legislation to EU standards.

Reasonable compliance of Ukrainian law to that of the European Union is needed. Unless national legislation is adapted to EU standards, the law-making process will continue to be chaotic and disorganized and this will hamper the successful reform of HIV and narcotics legislation.

**Carrying out informational campaigns, including among professionals.** For example, the National Program now requires the MOH and oblast administrations to introduce drug replacement therapy (DRT) and the Ministry has confirmed this for outpatient and hospital facilities. Meanwhile, many medical workers wrongly think that DRT is prohibited by Ukrainian law.

**Developing, debating and adopting a national HIV and drugs strategy.** One such bill must be a Concept of state policy that balances the enforcement, treatment and prevention components, and a no-less-realistic program for instituting this Concept. Full-scale state funding of this critical area is a long-term investment in the country's socio-economic development.

**Providing effective forecasts.** This will ensure progressive legislation. The process of establishing standards is a never-ending activity. Moreover, there can be no sustainable development without proper planning and forecasting, which must be supported by proper methodological instruments and objective statistical indicators that eliminate ambiguous interpretation and manipulation.

**Protecting Budget allocations.** Financing for the necessary measures must become a protected item in the State Budget. For this purpose, the government must officially recognize the seriousness of the threat of the HIV/AIDS epidemic to national security and include it in the relevant norms.

**Establishing a single policy coordination center under the National Security Council.** The government must have an effective national working entity to respond to the HIV and drug epidemics and work under the coordination of a single center. Given the national security threat this epidemic represents, such a policy coordination center should be

## The EU will grant market economy status soon

Ukraine will soon be officially recognized by the European Union as a market economy country, according to a clarification from the Delegation of the European Commission to Ukraine that ICPS received on 16 November 2005.

"The European Commission has reached positive conclusions on Ukraine's request for Market Economy Status. The process of consulting the Council of Ministers is now underway. While the formal decision-making process is lengthy, the Commission hopes that a positive decision in principle will be taken in time for the EU-Ukraine summit," reads the message.

Getting market economy status from the EU will make it possible to defend the rights of Ukrainian exporters who so far have suffered from unfair competition due to often unjustified anti-dumping probes. The next EU-Ukraine summit takes place on 1 December 2005.

established under the National Security Council, which now includes the Minister of Health.

## Developing legal awareness in the government and among the public.

Public awareness becomes legal awareness only after people have formed an idea about legal regulation as the basis for creative activity and order to combat chaos and lawlessness. This can start with proper legal awareness in the legal community, then awareness in all branches of power, and end with broad-based legal awareness. So far, there has been no other way to get people to be law-abiding. Law enforcement is very subtle and ambiguous. The only way to improve it is not through persecution but through widespread legal awareness in the society. ■

*The report called "Reforming Legislation on HIV and Drugs. Organizing the Process of Legal Reform: Key Steps and Components" was presented on 3 November 2005 at a seminar called "Improving Technical Assistance and Building Capacity for Policy and Legal Work" that was organized by the Open Society Institute in Vilnius.*

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